

STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

01 MAY -8 AM 8:41

U.S. BANKRUPTCY COURT  
DIST OF SOUTH CAROLINA

IN RE:

Darin A. Deschaine and Kristy L. Deschaine,  
Debtor.

Summerville Heating & Air Inc., William  
Owens and Gail Owens  
Plaintiffs,

v.

Kristy Deschaine  
Defendants.

C/A No. 00-07620-W

Adv. Pro. No. 00-80253-W

JUDGMENT

ENTERED  
MAY 9 2001  
K.R.W.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order  
of the Court, Plaintiffs' Motion for Summary Judgment is granted.

Columbia, South Carolina,  
May 7, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

*BNC*

MAY 9 2001

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

*KW*

KAREN R. WEATHERS

Deputy Clerk

*Moore  
Paylor*

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THIS MATTER comes before the Court upon the Motion for Summary Judgment filed by Summerville Heating & Air Inc., William Owens and Gail Owens (collectively "Plaintiffs"). The basis for Plaintiffs' Motion is that there is no question of material fact that Kristy Deschaine's ("Defendant") debt to Plaintiffs in the amount of \$64,459.80, plus interest at the judgment rate of 14% per annum since September 14, 1999, is a non-dischargeable debt in accordance with 11 U.S.C. §523(a)(2)(A) and (4); therefore, Plaintiffs are entitled to judgment on their claim against Defendant as a matter of law pursuant to Fed. R. Civ. P. 56(c), made applicable in bankruptcy proceedings pursuant to Fed. R. Bankr. P. 7056. After considering the pleadings filed by the parties and the arguments of counsel at the hearing on said Motion, the Court makes the following Findings of Fact and Conclusions of Law:<sup>1</sup>

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<sup>1</sup> The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

## **FINDINGS OF FACT**

Plaintiffs are creditors of Defendant in two regards. First, on August 25, 1999, Defendant executed a Confession of Judgment in the amount of \$64,459.80 “together with interest from the date of filing the . . . Confession of Judgment at the statutory rate of fourteen percent (14%) per annum.” The Confession of Judgment stated that it was “for money justly due to William Owens and Gail Owens, arising from the misappropriating monies entrusted to the Defendant’s care.” Second, on August 26, 1999, Defendant entered a plea agreement in connection with the forgeries and fraud with which she had been charged and which were also the basis of the Confession of Judgment. Said agreement required that Defendant pay restitution in the same principal amount and was also ordered to pay a 20% administrative fee, which would go to the State Probation and Parole Board and not to Plaintiffs.<sup>2</sup>

On March 6, 2001, Plaintiffs moved for summary judgment arguing, among other things, that the state-court Confession of Judgment had preclusive effect on this action. In other words, Plaintiffs argued that they should be awarded summary judgment because the fraudulent claim against Defendant had already been determined in the state court, thus giving it a preclusive effect and causing the debt due pursuant to the Confession of Judgment to be nondischargeable pursuant to §523(a)(2) and (4). In her Opposition to Motion for Summary Judgment, Defendant argued that the Confession of Judgment should not be declared nondischargeable because it made no reference to any embezzlement, larceny or other actions by Defendant which would create a basis for nondischargeability pursuant to §523. Furthermore, Defendant noted: “If

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<sup>2</sup> From the beginning of this matter, Defendant has acknowledged that she is under the affirmative obligation, pursuant to her conditions of parole, to make restitution to Plaintiff and further recognizes that the Restitution Order and the administrative fees connected therewith are nondischargeable obligations.

Plaintiff is allowed to have the judgment and the restitution order declared nondischargeable, not only will Defendant have to pay the restitution amount and the required administrative fees, but also interest on the judgment amount declared nondischargeable. Defendant argues that this amounts to double dipping and is patently unfair.”

At the hearing on the Motion, the issues were narrowed and consolidated. While Defendant had originally contended that only the Order from the criminal case survived discharge, at the hearing she withdrew her objection to Plaintiff’s Motion in part and conceded that both the Confession of Judgment and the criminal Order were non-dischargeable. However, Defendant held out on one point-- that the interest generated on the Confession of Judgment should be deemed dischargeable. In turn, Plaintiffs clarified on the record that they were not attempting to collect on both the Confession of Judgment and the restitution order. Rather, they agreed that principles of offset applied to the case and that recovering the full debt twice would be improper. Thus, they acknowledged that any payments received by the Owens on the restitution order would also be credited to the Confession of Judgment, thus preventing double recovery.

### **CONCLUSIONS OF LAW**

The only issue remaining before the Court is whether the interest generated on the Confession of Judgment is nondischargeable. Whether interest and ancillary matters are discharged turns on the dischargeability of the underlying obligation. The United States Supreme Court has addressed this issue. In Bruning v. United States, 376 U.S., 358, (1964), a taxpayer failed to pay employment taxes in 1951 and was assessed those taxes in March of 1952. On July 6, 1953, the taxpayer filed a petition for bankruptcy which was granted in October 1953.

When the taxpayer later found that he was entitled to a refund for taxes in years 1953 and 1954, the government “applied the entire 1953 credit and part of the 1954 credit to the balance of the assessment of the withholding and F.I.C.A. taxes owed for 1951, plus interest to date--including interest which had accrued during the period between the filing of petitioner’s petition in bankruptcy (July 6, 1953) and the date of payment (March 7, 1958).” *Id.* at 359. The taxpayer agreed that he remained liable for the basic debt since it was non-dischargeable, but he argued that he was not liable for any interest that accrued after he filed his petition for bankruptcy.

The Supreme Court affirmed the decision of the lower court that the taxpayer remained liable for the post-petition interest on the non-dischargeable debt. Chief Justice Earl Warren wrote:

Initially, one would assume that Congress, in providing that a certain type of debt should survive bankruptcy proceedings as a personal liability of the debtor, intended personal liability to continue as to the interest on that debt as well as to its principal amount. Thus, it has never been seriously suggested that a creditor whose claim is not provable against the trustee in bankruptcy loses his right to interest in a post-bankruptcy action brought against the debtor personally. In most situations, interest is considered to be the cost of the use of the amounts owing a creditor and an incentive to prompt repayment and, thus, an integral part of a continuing debt.

*Id.* at 360. The rule has been applied in subsequent cases in which the debts were deemed non-dischargeable for other reasons. *See, e.g. Shannon v. Russell (In re Russell)*, 203 B.R. 303, 316-17 (Bankr. S.D. Cal. 1996) (holding that when a creditor is entitled to relief under fraud discharge exception, the bankruptcy court has discretion to award prejudgment interest from the date creditor made its demand for damage in adversary proceeding and noting that “the failure to mention interest in [federal] statutes which create obligations has not been interpreted by the courts as manifesting an unequivocal Congressional purpose that the obligations shall not bear

interest.”); American General Finance v. Steinbrunner (In re Steinbrunner), 149 B.R. 484, 489 (Bankr. N.D. Ohio 1992) (concluding that the debt at issue came within the exception to discharge for false financial statements pursuant to §523(a)(2)(B) and holding that creditor was entitled to judgment for the amount of the debt plus interest at the contract rate of 24.9% per annum from date of filing of petition.”); see also Allen v. Romero (In re Romero), 535 F.2d 618, 623 (10th Cir. 1976); Virginia Glass v. Cagle (In re Cagle), 253 B.R. 437 (Bankr. E.D. Ark. 2000) (concluding that the entire amount of the judgment debt, including actual and punitive damages as well as interest and costs, was nondischargeable); McLeod v. Diversified Collection Serv. (In re McLeod), 176 B.R. 455, 457 (Bankr. N.D. Ohio 1994) (holding that student loan was nondischargeable and noting that education lender was “also entitled to interest on the Loan at the contract rate.”); 2 John B. Butler, The Bankruptcy Handbook 16-113 (1997 & Supp. 2001) (quoting In re Gober, 100 F.3d 1195, 1208 (5th Cir. 1996)) (“[T]he status of ancillary obligations such as attorney’s fees and interest depends on that of the primary debt. When the primary debt is nondischargeable due to willful and malicious conduct, the attorney’s fees and interest accompanying compensatory damages, including post-judgment interest, are likewise non-dischargeable.”). For these reasons, the interest on Defendants’ admittedly non-dischargeable debt is likewise not discharged.<sup>3</sup>

Given the fact that no issues of material fact remain, it is therefore;

**ORDERED** that Plaintiff’s Motion for Summary Judgment is granted.

**IT IS FURTHER ORDERED** that both the criminal restitution order and the

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<sup>3</sup> The Court further notes that in this case the Confession of Judgment expressly provided for interest and attributes the amount due to Defendant’s misappropriation of the money. Thus, it is contractually a part of the nondischargeable debt at issue.

Confession of Judgment executed by the Plaintiffs, including the statutory interest incurred thereon since the filing of the judgment, are not discharged in bankruptcy. However, any payment received by the Owens on the restitution should be credited to the Confession of Judgment to prevent double recovery.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
May 7, 2001.

  
UNITED STATES BANKRUPTCY JUDGE



CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States  
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